

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMANDA BOSARGE, JAQUELYN BUTLER,
KIMBERLY HARRELL, WILLIAM MORGAN,
PASTOR PAUL PERKINS, BRANDI RENFROE,
and DR. JEANA STANLEY, Individually and on
behalf of their Minor Children

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:22-cv-233-HSO-BWR

DANIEL P. EDNEY, in his official capacity
as the State Health Officer; LYNN FITCH,
in her official capacity as Attorney General
of Mississippi; ASHLEY BLACKMAN, in
her official capacity as Principal of East Central
Lower Elementary School; DR. ARCHIE R.
MITCHELL, in his official capacity as
Principal of Senatobia Elementary School;
ALLISON MERIT, in her official capacity
as Principal of North Bay Elementary School;
DR. ASHLEY ALLRED, in her official
capacity as Principal of Vancleave Upper
Elementary School; and DOUGLAS L.
TYNES, in his official capacity as the City
Prosecutor for Ocean Springs, Mississippi

DEFENDANTS

**MOTION TO STAY ANY PARTICIPATION BY DEFENDANTS,
ASHLEY BLACKMAN DOOLEY AND DR. ASHLEY ALLRED, IN THE ACTIVE
LITIGATION OF THIS CASE AND TO GRANT OTHER RELATED RELIEF OR,
ALTERNATIVELY, TO EXTEND AND ENLARGE THE TIME FOR RESPONDING TO
PLAINTIFFS' COMPLAINT [DOC. 1], MOTION FOR SUMMARY JUDGMENT [DOC. 4],
AND MOTION FOR PRELIMINARY INJUNCTION [DOC. 3]**

COME NOW defendants, Ashley Blackman Dooley ("Dooley") and Dr. Ashley Allred ("Allred"), two (2) of the defendants in the above-styled and numbered civil action, and without waiving, but, to the extent this may become applicable in the future, hereby expressly reserving, all rights to assert any and all defenses, including, but without being limited to, any and all defenses available under Fed.R.Civ.P. 12 or otherwise, move the district court to stay any participation that would otherwise be required of them in the above-styled and numbered civil action and to grant other related relief as requested below

or, alternatively, to extend and enlarge the time for responding to plaintiffs' complaint [Doc. 1], motion for summary judgment [Doc. 4], and motion for preliminary injunction [Doc. 3]. In support of this motion, Dooley and Allred assign the following grounds and reasons:

1. In filing and pursuing this civil action, plaintiffs' goal is to have Miss. Code Ann. § 41-23-37 declared unconstitutional on the ground that it does not contain a religious exemption, so its enforceability can be enjoined, thereby permitting certain children of the plaintiffs to gain enrollment at public schools in Mississippi.

2. As the complaint explains, defendants, Dooley and Allred, are being sued in their official capacity as Principals of elementary schools in Jackson County operated by the Jackson County School District and the Jackson County School Board. Dooley is the Principal of East Central Lower Elementary School, and Allred is the Principal of Vancleave Upper Elementary School.

3. Plaintiffs are also seeking to recover attorneys' fees and costs from Dooley and Allred under 42 U.S.C. § 1988.

4. In view of the Fifth Circuit's prior holding in *Echols v. Parker*, 909 F.2d 795 (5th Cir.1990), however, plaintiffs cannot recover any attorneys' fees or costs from either Allred or Dooley. Since the statute in dispute in this case clearly represents official policy of the State of Mississippi, local officials like Dooley and Allred cannot be required to pay attorneys' fees or costs, inasmuch as they are merely pursuing their duties as agents of the state in enforcing state law and policy. *Id.* at 801.

5. In addition, in the capacity in which they are being sued, Dooley and Allred are merely nominal defendants who should not be required to actively participate in the litigation of this proceeding. A nominal party is a person or entity "identified as a plaintiff or defendant [who] has no interest in the litigation but has been included to meet some

technical pleading requirement or for other procedural reasons.” Vol. 18 *Moore’s Federal Practice*, § 131.40[2][b] (Matthew Bender 3d ed.). In this case, that clearly describes the positions of Dooley and Allred, because according to plaintiffs’ counsel, the various Principals named in the suit were merely joined to avoid the assertion of a necessary party defense by the State of Mississippi, since the Principals are the individuals who have responsibility for enforcing local State laws and policies in their schools.

6. Yet because Dooley and Allred must conform to the requirements of Mississippi law and policy, and because their positions are thereby clearly aligned with the State of Mississippi, there is no need for them to actively participate in the ongoing litigation of these disputes. As the Fifth Circuit observed in *Echols v. Parker*, local officials cannot be disassociated from the State when they have a duty to follow and enforce its statutes and policies. *Echols*, 909 F.2d at 801.

7. Dooley and Ashley should thus be permitted to remain on the sidelines, as it were, with the clearly implied understanding that they are supporting and will follow the positions taken by the State in this case and with the further understanding and acknowledgement that any *final* decision rendered in bringing this case to a conclusion will be *res judicata* as to them.

8. Alternatively, the district court should extend Dooley’s and Allred’s time for responding to plaintiffs’ complaint, motion for summary judgment, and motion for preliminary injunction and trial on the merits through and including November 30, 2022.

9. Other good and valid grounds for the relief being sought will be presented upon a hearing of this motion.

WHEREFORE, PREMISES CONSIDERED, defendants, Ashley Blackman Dooley and Dr. Ashley Allred, hereby pray that upon a hearing of this motion, the district court will enter an order that a) stays any active involvement by either Dooley or Allred in the ongoing active litigation of this case, with the result that both of them will thereby be released from any obligation to answer or otherwise respond to plaintiffs' complaint, to respond in any manner to any motions previously or hereafter filed, to participate in any hearing, to participate in any discovery, to proceed to trial, and/or to take any other action; and b) also recognizes and adjudicates that any *final* decision rendered in bringing this case to a conclusion will be *res judicata* as to Dooley and Allred; or, alternatively, c) extends the time for responding to plaintiffs' complaint, motion for summary judgment, and motion for preliminary injunction and trial on the merits through November 30, 2022.

THIS 9th day of November 2022.

Respectfully submitted,

ASHLEY BLACKMAN and
DR. ASHLEY ALLRED, Defendants

By: /s/ Joseph A. O'Connell
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CERTIFICATE OF SERVICE

I, Joseph A. O'Connell, do hereby certify that I have this day electronically filed the above and foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to the following:

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THIS 9th day of November 2022.

/s/Joseph A. O'Connell